NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ROBERT W. HALL, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	No. 04-73929 MEMORANDUM[*]

On Petition for Review of an Order of the
Environmental Protection Agency

Submitted February 13, 2006[**]
San Francisco, California

Before: REINHARDT, PAEZ, and TALLMAN, Circuit Judges.

We lack jurisdiction to consider Petitioner Hall's challenge of the Environmental Protection Agency's decision to allow Clark County to withdraw its Moderate Area State Implementation Plan ("Moderate Area SIP") and Serious

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Area State Implementation Plan ("Serious Area SIP") in December 2000. Hall filed a petition for review under 42 U.S.C. § 7607(b)(1). Even if we assume that the Environmental Protection Agency ("EPA") took a "final agency action" relating to Clark County's decision to withdraw its original plans, Hall filed his petition far outside of the 60-day time frame provided by the statute. *See id*.

On June 9, 2004, the EPA adopted its final rule approving Clark County's modified Serious Area SIP and granting Clark County's request to extend the deadline to attain the annual and 24-hour particulate matter National Ambient Air Quality Standard ("NAAQS") from 2001 to 2006. Final Approval and Promulgation of Implementation Plans, 69 Fed. Reg. 32,273 (June 9, 2004). The EPA did not act arbitrarily or capriciously and therefore we uphold the agency's decision. *See* 42 U.S.C. § 7607(d)(9)(A).

In its proposed rule to grant Clark County the 5-year extension, the EPA considered each of the requirements set forth in 42 U.S.C. § 7513(e). *See* Proposed Approval and Promulgation of Implementation Plans, 68 Fed. Reg. 2954, 2966-68 (Jan. 22, 2003). Furthermore, during the rulemaking process, the EPA adequately responded to Hall's comments. *See Am. Mining Cong. v. EPA*, 965 F.2d 759, 771 (9th Cir. 1992) ("[A]n agency need only respond to 'significant' comments, *i.e.*, those which raise relevant points and which, if adopted, would require a change in

the agency's proposed rule."). Because the agency gave a "satisfactory explanation for its action including a rational connection between the facts found and the choice made," we cannot say that the EPA acted arbitrarily or capriciously in adopting its final rule. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted).

Hall cannot challenge the EPA's final agency action under the National Environmental Policy Act ("NEPA") because it was an agency action taken under the Clean Air Act ("CAA"), and was not a "major Federal action" as defined by NEPA. *See* 15 U.S.C. § 793(c)(1). Moreover, Hall cannot challenge now the EPA's decision to change the particulate matter indicator from total suspended solids to PM-10.[1] The EPA issued its final rule adopting that change in 1987, Revisions to the NAAQS for Particulate Matter, 52 Fed. Reg. 24,634 (July 1, 1987), and the change was subsequently ratified by the 1990 Amendments to the CAA, *see, e.g.*, 42 U.S.C. § 7513.

PETITION FOR REVIEW DENIED.

[1]The EPA designated PM-10 as the new indicator for the particulate matter NAAQS. PM-10 includes particles 10 microns in diameter or smaller.